

**Disciplinary Process and Guidelines**  
**for the**  
**Kansas Board of Adult Care Home Administrators**

Initially developed by the Special Task Force on Licensure Standards and Disciplinary Actions, December 1997

Revised and updated by the Kansas Board of Adult Care Home Administrators,  
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## **Disciplinary Process**

### **Original Background**

An active review of complaints brought before the Kansas Board of Adult Care Home Administrators had identified a particular concern regarding the failure of adult care home administrator licensees in Kansas to report abuse, neglect or exploitation in accordance with state law and regulations. In order to better address concerns, a special task force was convened to address the issue of complaints, and relevant disciplinary actions. The task force submitted ANE Investigation and Reporting Process - Recommended Guidelines and developed guidelines to provide a method of screening complaints or allegations against an individual licensed administrator. The guidelines were general in nature since the intent was to provide guidance, not prescriptive or restrictive Board response. Each case needed to be presented to the Board and considered on its legal merits.

### **Current Background**

In 2001 the Kansas Legislature passed a law that authorized the Attorney General's office to provide legal services to the Board. Pursuant to that law, one Assistant Attorney General serves as the Board's disciplinary, or prosecuting, attorney and another Assistant Attorney General serves as the Board's general counsel. This change necessitated changes in the Board's investigative and adjudicative processes, plus a review of the referral determinants and disciplinary guidelines.

### **Disciplinary Process**

It is the intent of the Board of Adult Care Home Administrators to maintain credible standards in compliance with the laws and regulations in Kansas. Of primary concern is the protection of the vulnerable populations served by the licensees.

Therefore, due consideration should be given to the relationship of any reportable incident or complaint against a licensee and that licensee's actions. It is the duty of the Board to develop methods of determining whether individuals meet statutory requirements for licensure, as well as to enforce statutory and Board-developed standards in the disciplinary process.

The Board's investigative, and any subsequent disciplinary, process may be initiated either by way of a Kansas Department on Aging survey concerning a nursing facility or by an individual filing a complaint.

Following investigation, the matter is referred to the Board's Complaint Investigatory Committee for review and evaluation. The Complaint Investigatory Committee is composed of four BACHA members (two administrator representatives, one health care professional, and one consumer representative), assisted by the assistant Attorney General who serves as the disciplinary attorney for complaints. This Committee should first determine whether there is sufficient evidence to find a violation of one of the grounds for discipline specified in K.S.A. 65-3508. After review, the Complaint Investigatory Committee may close the complaint without action, send the licensee an educational or cautionary letter, request the licensee to submit an assurance of compliance letter, propose resolution by a consent agreement and order, refer the case for an administrative disciplinary hearing, or in appropriate cases, issue a summary proceeding order. The Complaint Investigatory Committee may also issue a public censure or private reprimand in accordance with the Kansas Administrative Procedure Act that provides the licensee with an opportunity for a hearing. The Committee may examine an administrator's file when considering the appropriate sanction proposed in a consent agreement and order.

Complaints referred for a disciplinary hearing are then presented to a hearing panel composed of the three remaining BACHA members (an administrator, a health care professional, and a consumer representative), assisted by the assistant Attorney General who serves as general counsel for the Board. If clear and convincing evidence at a hearing establishes one or more violations of K.S.A. 65-3508 to the satisfaction of the hearing panel, the panel issues a Final Order with findings of fact, conclusions of law, and appropriate discipline. The hearing will be conducted in accordance with the Kansas Administrative Procedure Act.

## **Disciplinary Guidelines**

If the Complaint Investigatory Committee determines sufficient evidence exists to establish a disciplinary violation and wishes to propose disposition of the case by a consent agreement and order, or if the Hearing Panel determines sufficient evidence exists to establish a disciplinary violation at a hearing, the following disciplinary actions are available:

- (1) Letter of reprimand (not published)
- (2) Letter of censure (published)
- (3) Stayed suspension of license with specified condition(s) (such as requiring a letter of assurance of compliance, additional continuing education, or supervised practice/supervised instruction internship by Board approved supervisor)
- (4) Actual suspension of license for set period of time plus stayed suspension for an additional set period of time with specified conditions
- (5) Actual suspension of license for set period of time, either with or without specified conditions required for suspension to be lifted
- (6) Revocation of license

If the Complaint Investigatory Committee determines that *insufficient* evidence exists to establish a disciplinary violation but wishes to alert, caution or educate the licensee, or that sufficient evidence exists to establish minimal or technical violation(s) the following *non-disciplinary* actions are available:

- Request an assurance of compliance letter
- Issue a cautionary letter
- Issue an education letter

## **Recommended Disciplinary Guidelines by Category**

The determination of the specific disciplinary action to be taken, within the range of recommended disciplinary actions, should be made through evaluation of aggravating and mitigating factors.

**Failure to comply with the provisions of K.S.A. 65-3505 and amendments thereto and continued to act as an adult care home administrator. K.S.A. 65-3508(a).**

The only violation here stems from K.S.A. 65-3505(b) when an administrator does not present a timely application for renewal and continues to practice. This type of situation is handled administratively through assessment of a late renewal fee or through the reinstatement process. Practicing without a valid license would be addressed under K.S.A. 65-3508(h).

**Substantially failed to conform with Board standards adopted under K.S.A. 65-3503 which pertain to good character, training or experience. K.S.A. 65-3508(b).**

Violations under this section would be applicable primarily to initial applicants for a license. In unusual circumstances lack of "good character" may apply to a licensee. Such circumstances would be fact specific and thus appropriate discipline could range from (1) through (6).

***Willful or repeated* violations of the provisions of the law or rules and regulations of the Kansas Department on Aging under the provisions of the Adult Care Homes Act (Article 9 of Chapter 39 of the Kansas Statutes Annotated). K.S.A. 65-3508(c).**

For first violation: (1), (2), (3), (4) or (5).

For second violation: (3), (4), (5) or (6).

**Administrator convicted of a crime found by the Board to have a direct bearing on whether such a person should be entrusted to serve the public in the capacity of an adult care home administrator. K.S.A. 65-3508(d).**

Misdemeanor conviction (depending upon the level of severity of the offense and the degree of harm caused residents): (2), (3), (4) or (5).

Felony conviction *not* resulting in actual harm to resident(s) or not directly related to administrator's work duties: (3), (4) or (5)

Felony conviction resulting in actual harm (e.g., bodily injury, property damage or theft) to resident(s): (4) or (5)

Felony conviction resulting in serious bodily harm (e.g., rape, homicide) to resident(s): (6)

**Failed to assure that nutrition, medications and treatments of residents, including the use of restraints, are in accordance with acceptable medical practices. K.S.A. 65-3508(e).**

Incidents *not* resulting in harm to resident(s), 1<sup>st</sup> violation: (1), (2) or (3).

Incidents *not* resulting in harm to resident(s), 2<sup>nd</sup> violation: (2), (3) or (4).

Incidents *not* resulting in harm to resident(s), 3<sup>rd</sup> violation: (3) or (4).

Incidents resulting in harm to resident(s), 1<sup>st</sup> violation: (3), (4) or (5).

Incidents resulting in harm to resident(s), 2<sup>nd</sup> violation: (4) or (5).

Incidents resulting in harm to resident(s), 3<sup>rd</sup> violation: (5) or (6).

Incidents resulting in serious bodily harm to resident(s), 1<sup>st</sup> violation: (3), (4) or (5).

Incidents resulting in serious bodily harm to resident(s), 2<sup>nd</sup> violation: (3), (4), (5) or (6).

Incidents resulting in serious bodily harm to resident(s), 3<sup>rd</sup> violation: (6)

**Administrator convictions for violations of federal or state drug or narcotic laws or habitually overindulging in alcohol or habitually misusing controlled substances. K.S.A. 65-3508(f).**

1<sup>st</sup> violation: (1), (2), (3), (4), (5) or (6).

2<sup>nd</sup> and subsequent violation: (3), (4), (5) or (6).

**Administrator habitually overindulging in alcohol or habitually misusing controlled substances. K.S.A. 65-3508(f).**

1<sup>st</sup> violation: (3), (4) or (5).

2<sup>nd</sup> and subsequent violation: (4), (5) or (6).

**Involved in aiding, abetting, sanctioning or condoning any violation of the law or rules and regulations under the Adult Care Homes Act (Article 9 of Chapter 39 of the Kansas Statutes Annotated). K.S.A. 65-3508(g).**

1<sup>st</sup> violation: (1), (2) or (3).

2<sup>nd</sup> violation: (3), (4) or (5).

3<sup>rd</sup> violation: (4), (5) or (6).

**Engaged in the practice of adult care home administration in violation of K.S.A. 65-3502 (i.e., practicing without a license). K.S.A. 65-3508(h).**

This would be applicable if license lapsed more than 30 days, person continued to practice and subsequently applied for reinstatement of license: (1), (2) or (3).

**Misrepresented or omitted a material fact on an application for licensure or in any other communication with the board. K.S.A. 65-3508(i).**

Applicable primarily to applicants for initial license. However, may be applicable to applicants for renewal of license. If misrepresentation or omission pertains to criminal conviction, follow disciplinary action for criminal conviction.

**Had disciplinary action taken against an adult care home administrator's license issued by another state or jurisdiction. K.S.A. 65-3508(j), or on a professional or occupational health care license, mental health care license or social worker license issued by this state or by another state or jurisdiction. K.S.A. 65-3508(k).**

Take same action as that taken by other jurisdiction.

#### Aggravating and Mitigating Factors

Evaluation of the following aggravating and mitigating factors provide guidance regarding an appropriate sanction within the range of suggested disciplinary guidelines:

1. Whether licensee's response to incident was appropriate.

2. Whether licensee was active participant in incident, or whether incident was the action of another person (e.g. staff, resident's friend or family member, or another resident)?
3. Whether licensee established and implemented policies and procedures to assure that nutrition, medications and treatments of residents, including the use of restraints, are in accordance with acceptable medical practices?
4. Whether there was significant failure to conform to the laws, rules and regulations of the facility licensing agency? (Including failure to report abuse, neglect or exploitation as required by K.S.A. 39-1401 *et seq.*)
5. Whether licensee has been previously disciplined? If so, how many times, what was the severity or degree of harm caused, what was the discipline imposed, and how does the current incident or reported issue relate?
6. Did the licensee aid, sanction, advise, counsel or in any way condone violating facility licensure laws or rules and regulations?
7. Did the licensee willfully commit a wrongful act or cause harm or injury to a resident?

Additional aggravating factors to consider:

- Whether future risk to residents is indicated.
- Degree of harm to resident(s), employer and profession.
- Vulnerability of resident(s).
- Whether conduct was exploitive.
- Whether misrepresentation, deceit or fraud was present.
- Whether conduct was isolated incident or repeated pattern.
- Degree of impairment

Additional mitigating factors to consider:

- Acknowledgment or admission of wrong-doing.
- Whether conduct was inadvertent or a mistake.
- Remorse about conduct.
- Awareness of effect on resident(s) and family.
- Demonstrated rehabilitation or willingness to rehabilitate
- Probability of successful rehabilitation.

### Definitions or Clarifications

1. *Assurance of Compliance letter:* A letter from the administrator explaining the event or incident, informing the Board how the matter was corrected or will be corrected, and assuring that the facility is or will be in compliance with the appropriate law, rule



or regulation.

2. *Willful* conduct:: *Willful* means intentional and voluntary, not accidental or involuntary. [Derived from Black's Law Dictionary, 1434 (7<sup>th</sup> Ed.).]
3. *Aider and abettor*: "One who assists another in the accomplishment of a common design or purpose; he must be aware of, and consent to such design or purpose. One who advises, counsels, procures, or encourages another to commit a crime, himself being guilty of some overt act or advocacy or encouragement of his principal, actually or constructively present when the crime is committed, and participating in commission thereof by some act, deed, word, or gesture . . . and sharing the criminal intent of the principal." Black's Law Dictionary, 63 (7<sup>th</sup> Ed.).
4. *Letter of reprimand*: A letter of reprimand is a letter from the Board to a licensee that indicates the licensee has violated a statute or regulation and is reprimanded for so doing. While a letter of reprimand will not be published, it is a public document under the Kansas Open Records Act.
5. *Letter of censure*: A letter of censure is a letter from the Board to a licensee that indicates the licensee has violated a statute or regulation and is publicly censured for so doing. A letter of censure will be published in the Department on Aging "Fact Sheet" and/or other appropriate public communications, and is a public document under the Kansas Open Records Act.